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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,999	07/17/2003	Yousheng Shen	011361.00064	2626
22910 7590 11/14/2008 BANNER & WITCOFF, LTD. 28 STATE STREET 28th FLOOR BOSTON, MA 02109-9601				
EXAMINER				
OLSEN, KAJ K				
ART UNIT		PAPER NUMBER		
1795				
MAIL DATE		DELIVERY MODE		
11/14/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

In response to the 3/20/2008 office action, applicant has attempted to amend claim 1. It is unclear how applicant can amend this claim seeing as the examiner explained that this claim has been effectively canceled. The memo from the Office of Patent and Legal Affairs (OPLA) that the examiner was given for these types of cases states that for reissue applications, “[a]ny claim cancelled by the reexamination certificate will be treated the same way as a claim lost in litigation, and stated in the next action to be deemed as cancelled.” Claims 1, 3-16, and 75 were cancelled by the reexamination certificate and are deemed cancelled in the reissue application. Applicant was instructed to cancel these claims in the next response. Not only has applicant not cancelled these claims, applicant has further requested amendment of claim 1. It is unclear how applicant can amend a claim that has been deemed cancelled. These claims were surrendered during the prosecution of the reexamination. Applicant failed to further prosecute these claims after the appeal decision in the reexamination and applicant is thereby not entitled to further prosecute these claims here in the reissue application. Because applicant’s failed to cancel claims 1, 3-16, and 75 as instructed by the examiner and has further attempted to amend one of the cancelled claims, applicant’s 9/22/2008 response is deemed non-responsive. For further guidance on what the applicant is entitled to further prosecute in a reissue application after issuance of a reexamination certificate, the applicant is invited to contact the OPLA reissue and reexamination division at 571-272-7703.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAJ K. OLSEN whose telephone number is (571)272-1344. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam X. Nguyen can be reached on 571-272-1342. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kaj K Olsen/
Primary Examiner, Art Unit 1795
November 15, 2008